

Online Research @ Cardiff

This is an Open Access document downloaded from ORCA, Cardiff University's institutional repository: <https://orca.cardiff.ac.uk/id/eprint/123050/>

This is the author's version of a work that was submitted to / accepted for publication.

Citation for final published version:

Köhler, Holm-Detlev, González Begega, Sergio and Aranea, Mona ORCID: <https://orcid.org/0000-0003-1142-7993> 2015. Three decades of European Works Councils. A quantitative evaluation. Warsaw Forum of Economic Sociology 6 (1(11)) , pp. 49-74. file

Publishers page: <http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.elem...>
<<http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-294b11e8-33cf-402d-8351-f62e918d37f7>>

Please note:

Changes made as a result of publishing processes such as copy-editing, formatting and page numbers may not be reflected in this version. For the definitive version of this publication, please refer to the published source. You are advised to consult the publisher's version if you wish to cite this paper.

This version is being made available in accordance with publisher policies.

See

<http://orca.cf.ac.uk/policies.html> for usage policies. Copyright and moral rights for publications made available in ORCA are retained by the copyright holders.



Three Decades of European Works Councils. A Quantitative Evaluation

Holm-Detlev Köhler*

Sergio Gonzalez Begega**

Mona Aranea***

Abstract

European Works Councils (EWCs) constitute the most developed arena of social dialogue in the EU's multi-level system of employment relations. In this paper we give an overview over the quantitative trajectory of these representation bodies and evaluate the potential for their future development. Based on the historical development of the legal framework since the 1980s we establish a four phase periodization with different motives and dynamics in the creation of EWCs. Using the European Trade Union Institute (ETUI) database on EWCs we look at several company characteristics that might have an effect on EWC creation such as country of origin, company size and degree of internationalisation. Our findings confirm a strong relationship between the development of the European legal framework and EWC creation dynamics. We argue that the current voluntaristic soft law approach without clear binding obligations for the companies covered by the EWC Directive is one of the main factors to explain the currently very low EWC creation rate in a context of growing internationalisation of firms and industries.

Keywords: European Works Councils (EWCs), European industrial relations, Transnational companies, Information and consultation rights, Employment participation

* University of Oviedo, hkohler@uniovi.es

** University of Oviedo, gonzalezsergio@uniovi.es

*** University of Oviedo, mona.aranea@gmail.com

Introduction

The European level of industrial relations has evolved in the last twenty years as a potential tool for employee representatives and trade unions to defend workers' rights in companies operating in the European Union¹. In times of corporate globalisation there is a need for labour to recover bargaining power and actual political influence over corporate decision-making (Boni 2012). For that purpose, we agree with da Costa et al. (2012: 13) that Europeanization is 'a central direction for furthering of trade union interest representation in the future'. As national systems of employment relations are suffering what Arrowsmith and Pulignano (2013) call a common process of fragmentation, the EU-level instruments for information and consultation are becoming even more important for employee representatives throughout Europe.

Since the adoption of Directive 94/45/EC by the European Council in September 1994, European works councils (EWCs) have been the spearhead of European industrial relations. In the past 20 years since the EWC Directive, over 1000 multinational companies have established a proceeding to provide information and consultation rights to their European workforces. EWCs constitute the most developed arena of social dialogue in the EU's multi-level system of employment relations. Other arenas, such as the European social dialogue both at intersectoral and sectoral levels have not had the same impact on the reality of working life in Europe.

The history of EWCs reaches back around thirty years as the first proto-EWCs were installed already in the 1980s. This article takes a critical look at three decades of EWC development. Most authors only take into consideration the time after 1994, the year in which the EU laid the legal ground for EWCs. We also include the historical phase before in which pioneering experiences in European worker participation were made. This period is often neglected because it was only after 1994 that the quantitative evolution of EWCs took on pace.

The regulation on EWCs was revised in 2009 in order to adapt the legal piece to the changes in employee representation practice. The Recast Directive 2009/38/EC

¹ The authors would like to thank Romuald Jagodzinski (European Trade Union Institute) (ETUI) for the provision of much of the data used in the article and for his help with data display. The work of Mona Aranea for this paper was financially supported by the European Union FP7-PEOPLE-2012-ITN project 'Changing Employment' ('The changing nature of employment in Europe in the context of challenges, threats and opportunities for employees and employers'), project no. 317321.

modified the legal procedure for establishing and operating EWCs, adapted the initial definitions given to information and consultation rights, clarified the transnational competence of these bodies and reserved a specific role for trade unions with regard to the support and technical advice of employee representatives. Both legal pieces have supported in two different periods a very intense process of creation of in-company structures for the representation of employee interests within transnational firms.

The EWC regulation has clearly created the necessary legal ground for worker representation in the EU though it has not lead to a common standard of information and consultation practice across works councils. Arguably, there exists considerable convergence in the architecture of EWCs on paper: as of 2012, 93 percent of all new agreements installing a EWC use as a blue print the so called fall back provisions of the 1994 Directive (ETUI 2013: 101). Where original agreements had stayed behind the minimum standards of the 1994 Directive (which was the case for many of the EWCs installed before the coming into force of the first Directive in 1997), trade unions had the opportunity to renegotiate agreements since the 2009 Directive. They indeed managed to improve EWC competencies in half of all the cases of renegotiation until 2012 (ETUI 2013: 102). This shows the importance of both the robust minimum standards provided by the 1994 Directive (ETUI 2013: 104) and the right to re-negotiate agreements given by the 2009 Directive. However, the literature on EWCs highlights the diversity of forms and operations underlying the actual exercise of these rights. In the absence of effective sanction mechanisms, agreed standards are not always respected by the companies (Jagodzinski 2014).

As the quality of information and consultation varies greatly among EWCs, so does the assessment of this instrument by social partners (Waddington 2011). EWCs have turned into an unsatisfactory experience for some practitioners and experts while for others they are still the most promising and advanced process in European industrial relations with a lot of positive fulfilments yet to come. In this regard, a significant number of references have focussed on the qualitative dimension of EWCs, aiming at identifying and discussing the institutional and organizational factors that encourage or hinder an appropriate development of these structures as bodies for information and consultation of employees (Platzer et al. 2001; Lecher et al. 2002; Eurofound 2004; 2006; 2015; Kotthoff 2006; Whittall et al. 2007; Hauser-Ditz et al. 2010; *inter alia*).

This stream of the literature has been supported by a less traceable group of references which are aimed at providing a general picture of the process of establishment of EWCs in transnational firms (Eurofound 1998; 2000; 2001; Kerckhofs

2002; 2006). We aim to contribute to this quantitative body of literature by shedding some light on the evolution of the number of EWCs in different periods of time.

This article undertakes a quantitative evaluation of active EWCs, using data from the European Trade Union Institute (ETUI) EWC database. We are interested in the quantitative outreach of EWCs: how many EWCs have been installed at different points in time and what explains variations in the growth rate during the past thirty years. We evaluate the impact of the phases of creation of EWCs as established in the calendar of the European regulation, on the quantitative development of EWCs. We argue that by looking at both the European legal framework and the nature of existing EWCs we can identify potential reasons why many companies covered by the Directive still do not have an EWC installed. These missing EWCs are our key concern (Blokland 2002).

The structure of the article will be as follows. After this introduction, in section two of the article, we give an overview over the unfolding of legal dispositions in Directives 94/45/EC and 2009/38/EC. These Directives have significantly conditioned the path and pace of the activity in setting up European works councils. In our historical and legal overview we distinguish between four phases in the evolution of EWCs since the 1980s. In section three we will examine the linkages between these phases and the establishment of new bodies for information and consultation of employees in companies with a European dimension. In addition to those historical factors we also assess the explanatory value of company-specific factors such as the sector, size of workforce, degree of internationalization or company home country. In section four we examine the overall quantitative picture today. The empirical evidence is derived from the ETUI database on EWCs. In the final section we present the most important conclusions from our data analysis. Our findings clearly point out that EWCs are not developing their full potential concerning quantitative outreach and that there is a need to further investigate what are the reasons for this blockade. We argue that weaknesses in the existing legal framework are an important explanatory factor for the quantitative underdevelopment of EWCs.

1. Thirty Years of EWC Regulation.

The Changing Legal Framework for Employee Representation at European Level

In the last thirty years of EWC development we distinguish four phases, following the legal milestones of EWC legislation set by the European Commission. The first period starts in the 1980s with so called proto-EWCs that were established in absence of any legal anchor and ends with the release of a first Directive on EWCs in the year 1994. After that, many new EWCs were created on a still voluntary basis before the coming into force of the respective legislation in 1996. The next historical landmark was constituted by a recast Directive on EWCs in 2009. Clearly, the first phase before 1994 was characterized by real voluntarism while the second, third and fourth phase on the contrary were marked by the unfolding of a legislative framework established by Directive 94/45/EC and the recast Directive 2009/38/EC. Table 1 below provides an overview over the four phases and summarizes the main characteristics of each phase. Concerning the names of the four phases we are inspired by the labelling established by Müller and Platzer (2003).

1.1. Before Directive 94/34/EC.

The Age of Pioneers (1983–1994)

The process of the creation of European Works Councils started almost ten years before the adoption of Directive 94/45/EC which established the first legal framework for the creation of EWCs. This first phase is characterized by real voluntarism as the first experiences of worker representation on European level originated in completely autonomous and voluntary initiatives from few companies (Müller and Platzer 2003).

The first structures of worker participation were orientated towards the exchange of information as bodies of corporate communication. These proto-EWCs became the principal source of inspiration for the European regulation on information and consultation that was to follow later (Rivest 1996). Müller and Platzer (2003: 61) point out that any structuration of the process of creation of EWCs should take into account

these pioneering experiences of worker representation that were created before the establishment of a legal framework.

These experiences had an important impact on the strategies of actors and the opportunities and limitations deriving from the 1994 Directive which constituted a clear point of no return. They also constitute important social dynamics that have had an impact on the normative framework and on the practical implementation of the norms through EWCs after 1994.

Table 1. Establishment of EWCs 1983–2014. Legal framework and periods

	I Real voluntarism	II Politically reinforced voluntarism	III Regulated voluntarism	IV Revised Voluntarism
Years	1983 ^a (10/1985 ^b) to 1994	1994–1996	1996–2009	since 2009
Legal basis	Voluntary agreements in the absence of a legal framework	Article 13 of Directive 94/45/EC	Article 6 of Directive 94/45/EC	Recast Directive 2009/38/EC
Nature of new EWCs	Proto-EWCs in companies based autonomy	EWCs voluntarily established, often management- initiative	slow growth of number of EWCs; initiative turned from managers to employees	EWCs established under the revisited directive

^a First informal meetings of worker representation at EU-level (Saint-Gobain).

^b Signature of the first agreement on the creation of a proto-EWC (Thomson Grand Public).

Source: adaptation from Müller and Platzer (2003); González Begega (2011).

The rise and consolidation of these first experiences in worker representation on the European level can be seen as a reaction to the failure of the respective projects of the European Community for the regulation of information and consultation rights since the 1970s (González Begega, 2011). Trade unions were worried by the standstill of this regulatory project after the rejection of the Vredeling Directive in 1983. This explains to a certain extent the appearance of proto-EWCs after 1983. French companies were the first ones who installed these pioneering EWCs. Müller and Platzer (2003) and also Salkin (2002) explain this with the existence of favourable pre-conditions under French labour law after the introduction of the so called *Lois Auroux*. It was through an inter-organizational learning process that the initiatives of a small number of French companies extended to other companies from Germany and from Nordic countries. Thus the French national experience was transformed to

a genuinely transnational process which formed the practical basis that inspired the European Commission to adopt a legal framework for European Works Councils in 1994 (Lecher, Nagel and Platzer 1999).

1.2. A Window of Opportunity. Politically Reinforced Voluntarism (1994–1996)

The adoption of the EWC Directive 94/45/EC in September 1994 constitutes a legal milestone that initiates the second phase of the creation of EWCs. The Directive determines the required procedures to install an EWCs as well as basic rules for information and consultation. After the transposition into national law of this Directive by the end of September 1996, all EWCs installed had to respect the respective rules and procedures which led to a visible window of opportunity effect. This legal piece established important incentives to install a European Works Council in its article 13 which releases existing EWCs or similar bodies for the purposes of information and consultation of employees installed before the coming into force of the Directive of the duties laid down in the rest of the directive. The EWC Directive 94/45/EC only came into force in September 1996.

The introduction of article 13 of the Directive served two objectives. On the one hand, the aim was to allow for the adaptation of existing experiences and proto-EWCs to the new legal framework on information and consultation. On the other hand, the European Commission wanted to make sure that as many companies as possible would accept this new legal framework with the result of a rapid growth in new EWCs.

Indeed, article 13 led to an unprecedented growth in the number of new EWCs after 1994. Between 1994 and 1996 there existed very few legal requirements for the installation of new EWCs. During this period, the only requirement was a formal written agreement to establish a European body of worker representation that had to include a vague reference to the information and consultation rights established in the Directive. Concerning the actual content of EWC agreements reached in those days, the legal regulation merely plays a role of external reference or source of inspiration. As a result, the agreements on the creation of an EWC reached during this period, just as those reached before 1994, are very much characterised by the power relations between management and employee representatives in each company. Given the heterogeneity and flexibility of negotiation processes, in many cases it is

difficult to determine the actual degree of worker participation in the creation of an EWC and to find out whether real negotiations have taken place or not (González Begega 2011).

The management of many transnational corporations considered the blunt legal requirements of article 13 as an opportunity for the installation of European level bodies of worker representation while avoiding any major commitments from management side. In fact, in many cases it was the central management board that initiated negotiations with employee representatives over the creation of an EWC. Trade unions took a pragmatic stand point in accepting the rather unsatisfactory provisions of article 13 in order to ensure a rapid expansion of the instrument of EWCs (Lecher, Platzer, Rüb, Weiner 2002).

1.3. Directive 94/34/EC into force. Regulated voluntarism (1996–2009)

The third phase in the evolution of EWCs starts with the coming into force of Directive 94/45/EC in September 1996. It has to be taken into account that many countries delayed the transposition into national law until later than 1997. However, for many companies in the EU installing EWCs based on completely voluntary agreements, as those of the proto-EWCs, was not possible any more after that year. From that moment on, negotiations towards the creation of new EWCs had to respect the provisions laid down in article 6 of the Directive.

As a result, the negotiation of an EWC agreement became a regulated process, subject to time limits and with the mandatory outcome of a European level body of worker participation. Once demanded by employee representatives, an EWC now had to be installed within the given time frame of three years even if management and employee representatives could not reach an agreement. In that case, the legal minimum standards of the Directive concerning composition and functions of the EWC would apply.

The coming into force of the demanding and binding legal framework meant end of the ‘window of opportunity’ effect: at least for management, incentives to install an EWC had largely disappeared (Nakano 2004; Gilman, Marginson 2004).

Article 6 of the Directive offered effective negotiation rights to employee representatives and gave them the capacity to determine the content of the EWC agreement on an equal footing with management. We can see a clear loss of interest

from employers and employees after the year 1996 and as a result a slump in the growth of new EWCs. In addition to that, the loss of interest can also be traced down to factors independent of the legal framework. Platzer, Rüb and Weiner (2001) point out among them the fact that in the group of TNCs with a genuine interest in having a European Works Council now many were equipped with one. So the number of large companies that could or should install an EWC but had not done so yet was getting smaller and these missing EWCs were not easy to identify and target for trade unions (Blokland 2002).

The period of regulated voluntarism ended with Directive 2009/38/EC which constituted a new normative milestone in the evolution of EWCs. This legal piece was adopted in May 2009 and came into force in 2011.

1.4. Developments under Directive 2009/38/EC. Revised Voluntarism (2009–2015)

Directive 2009/38/EC amended the information and consultation rights for employee representatives in European Works Councils. The Directive laid special ‘emphasis the timely conveying of information by management, which is obliged to transmit it to the EWC at a stage early enough for employee representatives to analyse and prepare for consultations’ (Jagodzinski 2009: 127). Another key upgrade is that the Directive obliges management “to transmit information required for starting negotiations for an EWC (in particular information about the structure of the undertaking or the group and its employees)’ (Jagodzinski 2009: 128).

It seems by the year 1996 that the pool of companies interested in establishing a body of information and consultation on the European level had been largely exploited by trade unions. The resulting stagnation in the creation of new EWCs could not be overcome after the 2009 Directive. In the years before 2009 trade unions had suggested to create some kind of formal register for companies covered by the EWC regulation in order to be able to identify and target those companies (Buschak 2004; ETUI 2008). The aim was to further enhance the coverage of the EWC legislation through the creation of new EWCs.

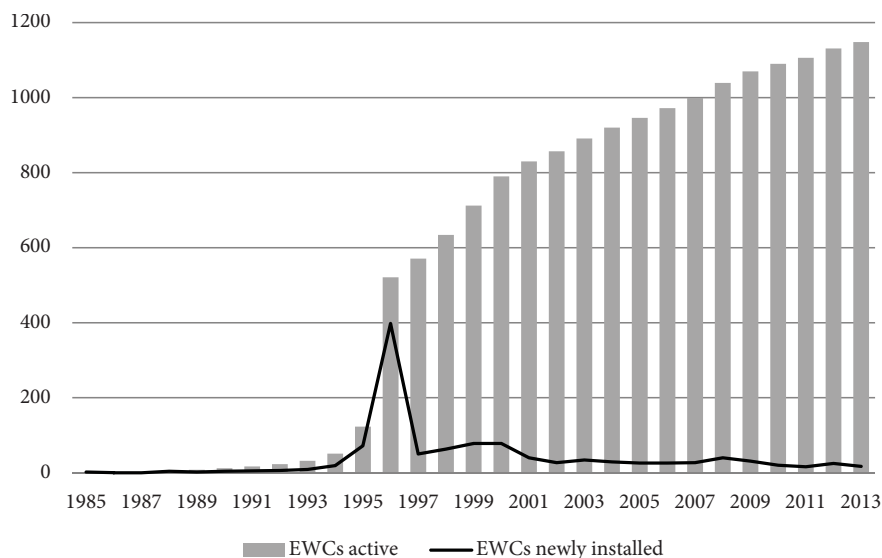
The final text of the recast Directive did not include the trade union proposal concerning the registration of companies. Such a register would have allowed for the identification of potential EWCs, especially in small and medium-sized transnational

companies. It would also have improved the visibility of existing bodies of information and consultation on the European level (González Begega and Köhler 2011).

2. The Evolution of EWCs Since the 1980s. From Boom to Stagnation

In absolute numbers, the overall picture suggests a steady growth in the number of existing EWCs in the last two decades. This development is visualized in the bars of Figure 1. However, the number of newly installed EWCs, as indicated in the line crossing the bars, varies significantly for each year. The line highlights the impact of the 1994 Directive on the number of newly created EWCs, with almost four hundred new EWCs only in the year 1994. Interestingly, while we can clearly see a window of opportunity effect around the year 1996, created by the first EWC Directive (94/45/EC), such an effect is largely absent in the years around the revised EWC Directive (2009/38/EC)².

Figure 1. EWCs active and EWCs newly installed per year 1985–2013

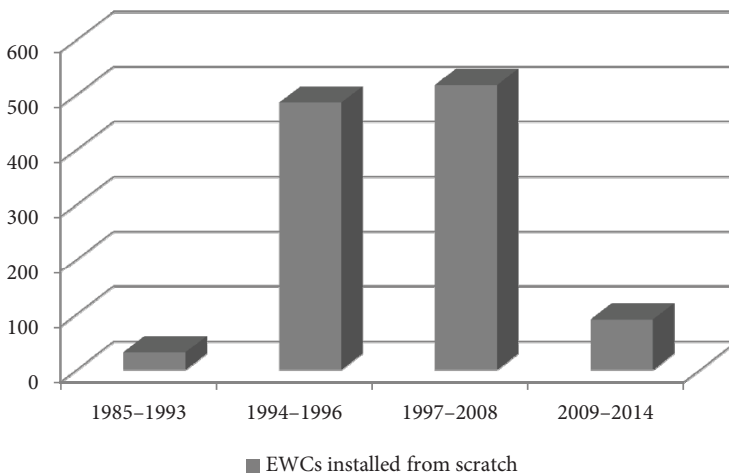


Source: own compilation based on ETUI EWC database, www.ewcdb.eu

² ETUI EWC Database is not completed for 2014. There exist the possibility that some EWCs are not captured. Nor does it account for the several EWC agreements currently under negotiation.

In Figure 2 we have grouped newly installed EWCs according to the four phases in the development of the legal framework (outlined in the previous section of this paper). What we can see here is that after the phase of pioneer or proto EWCs (1983–1993) with below fifty newly installed EWCs, the comparatively short phase between 1994 and 1996 has seen an exponential growth with almost five hundred new EWCs which can be easily traced back to the coming into force of Directive 94/45/EC in the year 1996. Between 1996 and 2008 we also find an impressive number of just over five hundred new EWCs but we have to take into account that this involves a much longer time frame than the phase of politically reinforced voluntarism from 1994 to 1996.

Figure 2 EWCs newly installed in each period 1985–2013



Source: own compilation based on ETUI EWC database, www.ewcdb.eu

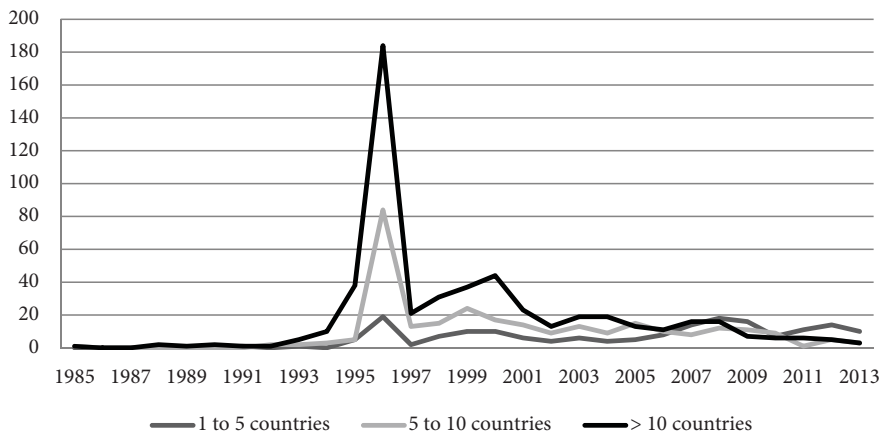
Since 2009 not even one hundred new EWC agreements have been completed which constitutes an annual growth rate below the one after 1997. So the EWC growth effect of the 2009 Directive is a far cry from what we have seen after the 1994 Directive. It is easily understandable why management did not have an interest in supporting an EWC after the window of opportunity effect of the first Directive had worn out. What is rather puzzling is the absence of strong trade union initiatives for new EWCs, given the improved standards for information and consultation under new regulation. The available data clearly shows that the 2009 Directive has not created incentives for the creation of new EWCs comparable to those responsible for the impressive growth rate after 1994. The obvious question is therefore, what kinds

of incentives are missing from the current legislation and what other factors apart from the legislation influence EWC creation.

The legal milestones set by the European Commission in 1994 and 2009 are the most obvious but certainly not the only factors that can explain the installation of new EWCs. Other relevant legal milestones are the three rulings by the European Court of Justice that deal with information and consultation rights as well as national jurisprudence (Moreau 2008). Also, it is necessary to take into account some company specific factors in order to see whether some companies in the past have been more willing to install EWCs than others. Indeed, when accounting for headquarter country, degree of internationalization and size of workforce, we find that there are important variations between firms that have installed an EWC in the last twenty years (Kerckhofs 2002; 2006).

The EWC database groups companies with EWCs installed according to their degree of internationalisation in three distinct categories. One group is formed by large TNCs with operations in more than ten countries of the European Economic Area (EEA), a second group contains those companies with a medium level of internationalisation which are active in five to ten EEA countries and a third category is formed by least internationalised companies with up to five foreign operations.

Figure 3. EWCs newly created by degree of internationalisation 1985–2013



Source: own compilation based on ETUI EWC database, www.ewcdb.eu

As can be seen in Figure 3, companies with different degrees of internationalisation have rather similar EWC growth rates (new bodies installed per year) throughout the years, with common peaks in the window of opportunity years around 1994–1996.

They also show another similar, though much smaller, high point of growth around the years 1997–1999 due to the window opportunity effect of Directive 97/75/EC, which extended European regulation on information and consultation of employees to British companies. On the other hand, there is no visible influence of the 2009 Directive as an important legal milestone when it comes to the degree of internationalisation of the firms having EWCs. Results are largely congruent when grouping companies by workforce size. Especially large companies (more than 10,000 employees) experience unusually high numbers of new EWCs around the year 2000. Middle-sized companies (5000 to 10,000 employees) and small employers (below 5000 employees) do show similar increases in their EWC growth rate around the same time but the overall number of EWCs is smaller than for large companies which makes it difficult to relate the workforce size to specific peaks in the quantitative development of EWCs. We do not display the respective graph here due to its similarity with Figure 3.

The picture looks slightly different when taking into account the country of origin of firms with EWCs installed. Figure 4 provides an overview over the number of newly installed EWCs for companies headquartered in the United States, Germany, France and the United Kingdom over time.

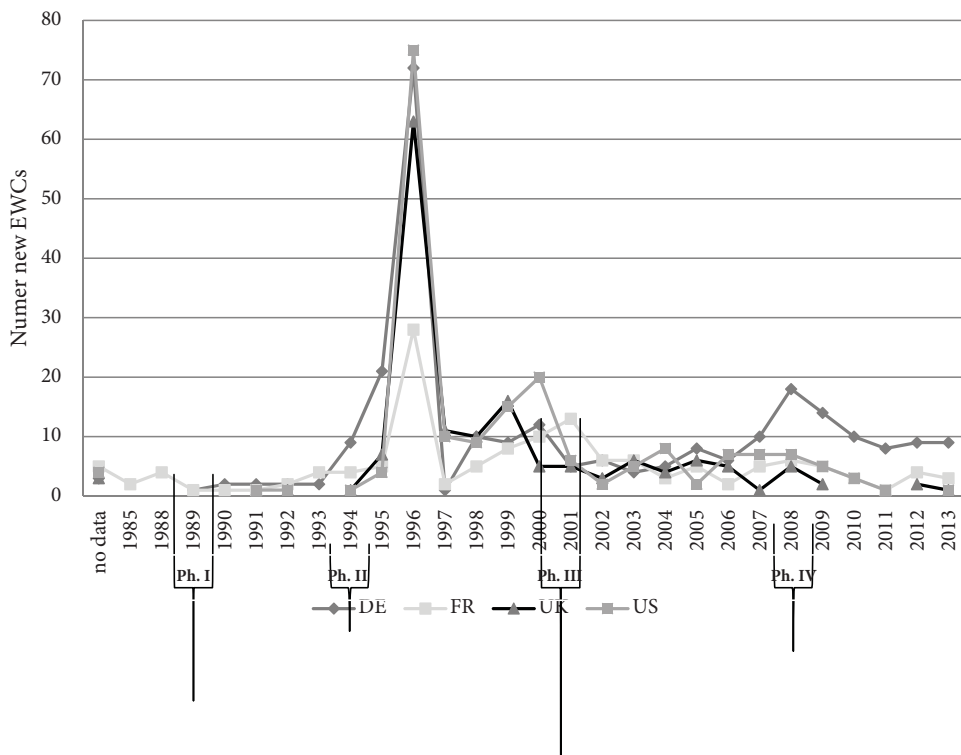
Obviously there are many more headquarter countries but for reasons of visibility and reliability, we selected the four most frequent headquarter countries among EWCs today. From each of these countries we have more than one hundred companies with an EWCs installed while for most other countries the rate is below fifty (ETUI database 2014).

What we can see in figure 4 is that apart from the unsurprising common peak in the years 1994–1996 we find several other high points of EWC growth that differ from one headquarter country to another. Germany shows a clear peak just before the 2009 Directive which can be interpreted as an isolated window of opportunity effect of the Directive 2009/38/EC on German multinationals. It has to be taken into account that British companies have been covered by the EWC legislation only after 1997. Through Directive 97/75/EC, the European Commission granted companies from the United Kingdom an extension for the creation of EWCs under the rather blunt legal provisions of article 13 Directive 94/45/EC. This certainly plays a role in the re-activation of new EWCs between 1997 and 1999.

However, as we can see in figure 4, companies headquartered in Germany, France or the United States have shown similar growth rates concerning new EWCs in the same years. The inclusion of the United Kingdom in the EWC legislation does not distort the overall figures because companies from other headquarters were just as willing to install an EWC in those years: the window of opportunity effect worked for

many countries, not only for the United Kingdom. All companies show high points between the years 1998 and 2001 which is largely congruent with the findings above on degree of internationalisation and workforce size. Apart from these two peaks, trajectories vary a lot from one headquarters country to the other. The inclusion of new member states into the European Union after 2004 has not created a visible growth in the creation of EWCs. In fact, new member states are among the least represented nations when it comes to headquarters countries of EWCs in existence.

Figure 4 EWCs created by year & country of Headquarters 1985–2013



Source: own compilation based on ETUI EWC database, www.ewcdb.eu

3. Current EWCs Development. Stable But Stagnating Institutions?

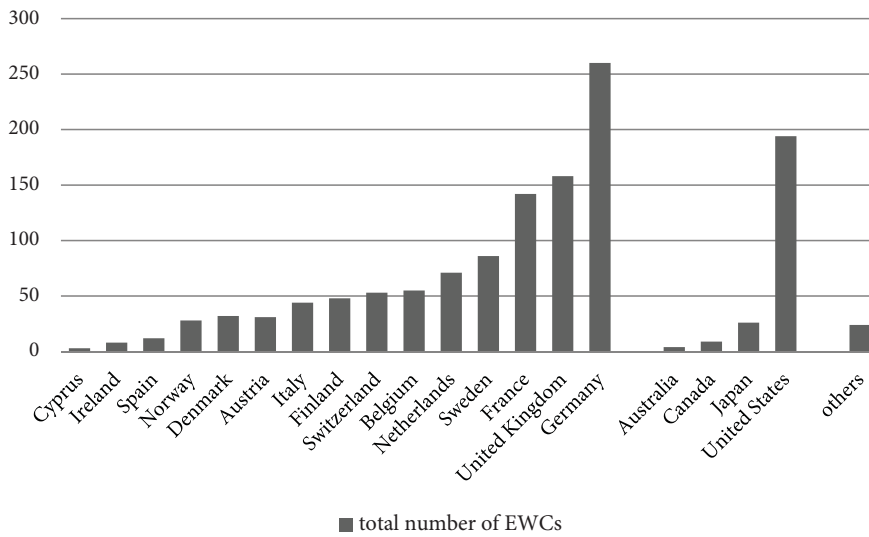
Clearly the amount of around 1150 European works councils today is impressive when compared with the year 1990 when only twelve EWCs were active. Of course the absolute numbers do not tell us anything about the degree to which EWCs are developing their full potential concerning the scope of the EWC Directives. In order to make an assessment of the success or failure of the quantitative outreach, we have to look at the compliance rate. By compliance rate we mean the number of companies covered by the respective legal framework that actually have an EWC installed.

The overall compliance rate throughout the EU is estimated to be between 40 and 65 percent (Kerckhofs 2006; Jagodzinski 2011; Waddington 2011; González Begega 2011). However, an accurate estimation of the EWC coverage rate is difficult due to the voluntaristic nature of the Directive. For once, there is no formal register of corporations falling under the Directive so their total number throughout the European Union remains unknown (ETUI 2008). One central problem here is the lack of transparency concerning the structure and geographic scope of corporations (Whittall et al. 2008). Moreover, management and employees can decide on the creation of an EWC without informing the European Commission or the ETUI. Therefore there cannot be complete certainty that all EWCs are included in the ETUI EWC database.

It is clear however that the full compliance rate has not been reached: there are still many employees out there who are legally entitled to information and consultation rights at the European level through the instrument of a EWC. Management is sometimes not willing to make statements on the real size of the corporate workforce and has indeed in some cases been forced to hand out the respective information to employee representatives through rulings of the European Court of Justice (Jagodzinski 2011: 210). Therefore, workers want to know whether they are entitled to demand a European works council and are reportedly denied their right to know. Waddington (2011: 75) estimates an increase in the coverage of around one percent per year which basically means the number of EWCs is growing at snail's pace. In the light of these arguments we find it rather peculiar that, as Whittall, Lücking and Trinczek (2009: 547) point out, 'the non-implementation of the Directive remains ... unnavigated territory'. The European Union has created a legal framework to

encourage the creation of EWCs but until today is not making an effort to evaluate whether the legal incentives have actually developed their full potential or not.

Figure 5. EWCs by headquarter country



Source: own compilation based on ETUI database www.ewcdb.eu

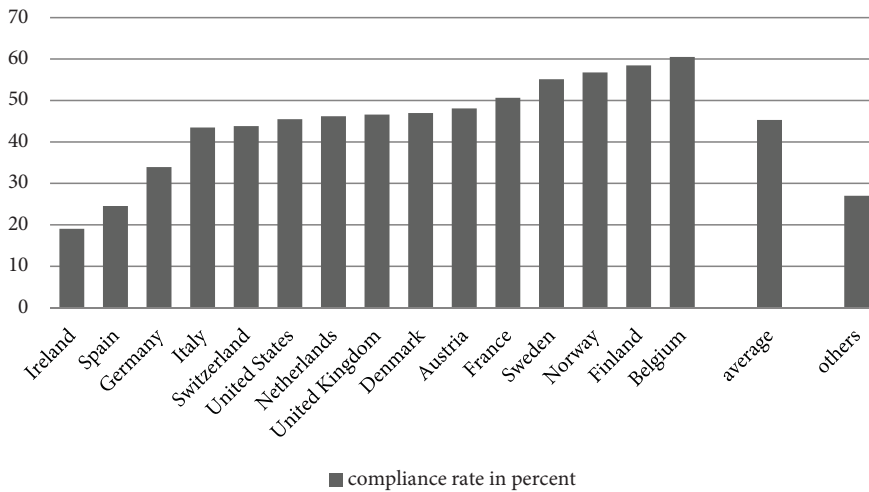
When we look at the headquarter countries of firms that have installed an EWC, German firms clearly lead the row, followed by companies from the United States, the United Kingdom and France. Figure 5 gives an overview over currently active EWCs by country of headquarter. The picture is less impressive when it comes to national coverage rate. As mentioned above, the lack of knowledge on the total number of companies in each country covered by the Directive renders a reliable assessment of the saturation rate impossible. However, according to the ETUI database, only around thirty percent of all German companies eligible to an EWC have actually installed one and also in France and the UK the saturation rate is below or around forty percent.

Figure 6 below shows the level of compliance on basis of national comparison as of 2014³. Here we see for selected member countries which have participated in the process since 1994 (1997 in the case of the UK) the number of companies with a EWC

³ Permission to quote the ETUI EWC Database compliance rate indicator granted by ETUI.

installed in relation to the total number of companies covered by the Directive in the respective country.

Figure 6. Compliance Rate per country (selected) 2014



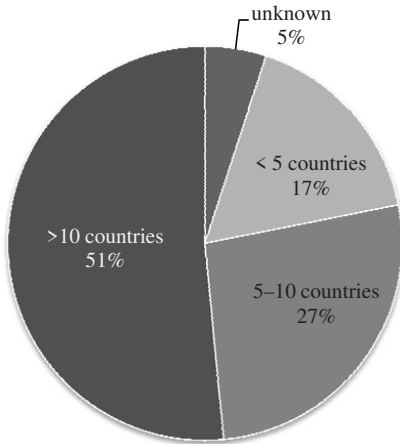
Source: own compilation based on ETUI database, www.ewcdb.eu

For the German situation, Whittal, Lücking and Trinczek (2009) have pointed out that in many German companies employee representatives do not see the added value of a European works council as they consider their national channels of participation in the corporate management to be sufficient. They are not very afraid of the intra-firm competition from other European subsidiaries as they ‘appear confident that they already have the ear of central management’ (Whittal, Lücking, Trinczek 2009: 559).

As can be seen in Figure 7, companies that operate in more than ten countries have installed more than half of the works councils in place today. Companies with a high degree of internationalization form the biggest group of companies with EWCs installed. Providing for thirty percent of all EWCs, companies operating in five to ten EEA countries form the second biggest group. Less internationalized companies, below five foreign operations, only represent five percent of all EWCs. So many of the large companies throughout Europe count with an EWC as an arena where employee representatives exercise their rights of information and consultation. Clearly, large multinationals are easier to locate and target by trade unions which therefore ‘have tended to concentrate resources on larger, internationalised, and high-profile companies’ (Waddington 2011: 63). However, the total number of companies

covered by the EWC Directive is unknown. So in how far the high number of EWCs from large companies constitutes a high compliance rate for these companies is still an open question (Kerckhofs 2002; 2006).

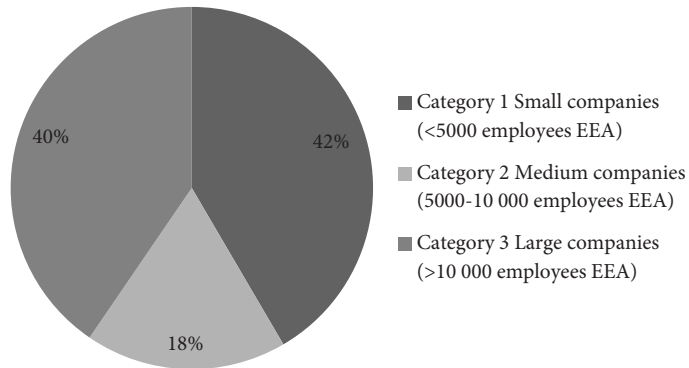
Figure 7. Active EWCs 2014 by degree of internationalization (2014)



Source: own compilation based on ETUI EWC database, www.ewcdb.eu

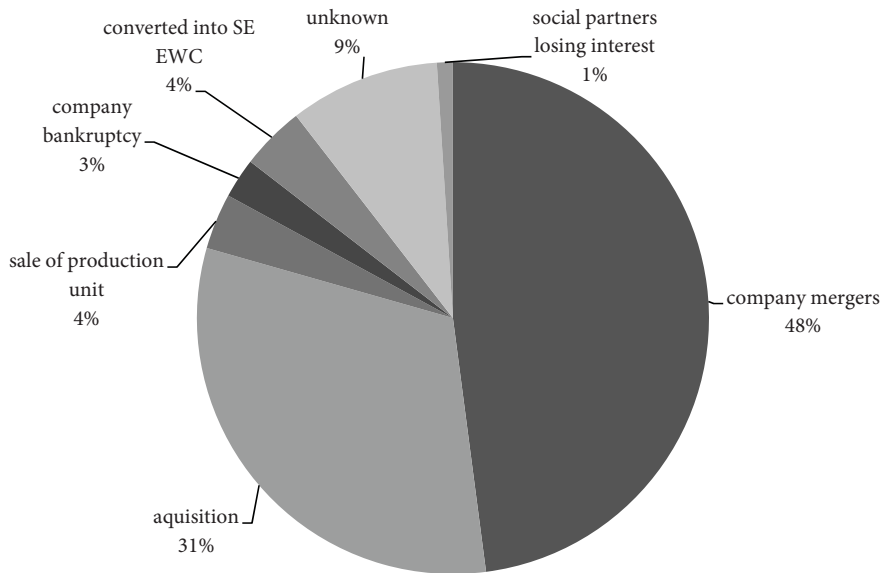
The picture looks a bit different concerning workforce size, another indicator introduced in Kerckhofs (2002; 2006). Figure 8 shows all EWCs installed by size of workforce in the EEA. Interestingly, small companies with less than 5,000 employees provide for almost forty percent of all EWCs while another forty percent are installed in large companies of more than 10,000 employees. On the reasons for this one can only speculate, but it is possible that employee representatives themselves in medium-sized companies from 5,000 to 10,000 employees do not see a particular added value from the installation of an EWC and fear the unpredictable amount of additional workload connected with transnational co-operation (Jaeger 2011: 6)⁴.

⁴ The differentiation between small (>5,000 employees EEA), medium (5,000–10,000 employees EEA) and large-size companies (<10,000 employees) is based on the analysis made in the ETUI EWC database.

Figure 8. EWCs active by category of employment (2014)

Source: own compilation based on ETUI EWC database, www.ewcdb.eu

EWCs might not be the preferred arena of employment relations for all employee representatives in all companies at all times. The fact remains however that once installed an EWC is hardly ever dissolved later. Figure 9 gives an overview over reasons for the dissolution EWCs as of 2014. Accounting for almost eighty percent of all dissolved EWCs, the most important triggers to dissolve an EWC are mergers and acquisitions which in most cases lead to the merger or re-creation of EWCs. In nine percent of all cases the reasons for the dissolution of an EWC are unknown, four percent are due to the conversion into a Euro-company (*Societas Europæas*, SE) with the resulting need to form a new EWC according to the changed company structure. Only one percent of all dissolutions happen due to a loss of interest by representatives of management of employees. This suggests that actors once convinced of the utility of the EWC as their chosen instrument of transnational employment relations hardly ever change their mind in the course of time. This is despite all problems connected with processes, agreements and implementation in EWCs (Waddington 2011). So there is visible potential for persisting firm-level industrial relations and micro-level social dialogue through EWCs.

Figure 9. EWCs dissolved by reason for dissolution, 2014

Source: own compilation based on ETUI database www.ewcdb.eu

Conclusions. The Need for a New Push

We have given an overview over the quantitative trajectory of EWCs and evaluated the potential for their further development. In relation to the normative regulation framework we have established a four-phase periodisation in which each phase was characterised by different motives and dynamics in the creation of EWCs. Using the ETUI EWC Database, we then examined several variables that might have an effect on EWC creation such as country of origin, company size and degree of internationalisation. We find that these company variables do have some impact on transnational worker representation as large, highly internationalised companies are most likely to install an EWC. However, the most impressive growth in the number of EWCs can be observed during the window of opportunity period, between 1994 and 1996. This clearly indicates that the most important incentive to create a European

body of worker representation is the legal pressure on companies exercised by the European Commission.

EWCs can be considered today as mature transnational institutions of worker representation with more than 20 years of development to look back at. Commonly they are referred to as the most far reaching transnational industrial relations body giving the employees of transnational companies information and consultation rights at European level. The EWCs installed show a considerable stability with many of them working for more than a decade. The EU enlargement provided few new EWCs but many existing EWCs renegotiated their structure and composition now including representatives from the new member states. In a context of underdeveloped industrial relations and representation structures, typical for the new EU members, these experiences may enhance the social parties to develop more effective bargaining institutions. The institutional stability of existing representation bodies builds a sharp contrast to the low dynamics of EWC creation.

Our analysis confirms a strong relationship between the legal regulation and EWC creation dynamics. The window of opportunity effect of article 13 EC Directive 94/45/EC motivated the high number of EWCs set up in the years 1995 and 1996. The possibility to set up an EWC without any legal rules or requirements constituted a strong incentive particularly for management initiatives to establish more symbolic EWCs without effective participation rights. A further explanation for the exceptional dynamic in this period may be the novelty of a legal framework to set up representation bodies in companies with existing participation structures such as the group works councils in German companies (*Gesamtbetriebsrat* or *Konzernbetriebsrat*). With the coming into force of the Directive at the end of 1996, this window of opportunity effect disappeared and particularly the management lost incentives to take the initiative to create an EWC. Some argue that the lack of new EWCs after 2009 “can be easily explained by the degree of uncertainty concerning the legal status and requirements of the newly recast Directive 2009/38’ (Jagodziniski 2011: 205). However, the stagnation in the growth of new EWCs does not originate with the 2009 recast Directive but can be traced back to the year 1996 when the effect of Article 13 of the Directive wore out. In consequence, the missing EWCs will not be created under the current legislation because they lack incentives to do so (Blokland 2002).

The relation between the legal framework and overall EWC growth is an important research result as it points out that purely voluntary initiatives without a legal framework have clear limits concerning both growth and impact. The voluntaristic soft law approach of the Directive without clear binding obligations for the companies covered is one of the main factors to explain the very low EWC

creation rate since then in a context of growing internationalisation of companies and industries. The revision of the Directive in 2009 upgraded some parts of the initial Directive, particularly concerning the information and consultation procedures, but had no visible effect on the creation of new EWCs. The same holds true for the EU enlargement of 2004 with 12 new member states and a growing number of companies potentially covered by the Directive but few new EWCs installed. Given the structural conflict of interests between labour, interested in effective regulation, and capital, interested in deregulation impeding collective representation, legal pressure is essential for the development of transnational representation structures. The failure of earlier attempts since the 1970s confirms this stance.

Certainly, various practical problems and the lack of effectiveness may explain part of the current stagnation in the growth of new EWCs. Therefore, even on the labour side the interest and effort to set up EWCs is often rather modest due to the low value added by transnational bodies without effective bargaining and participation rights, which at the same time generate costly and time consuming management problems for trade unions and local works councils. The growing literature on qualitative case studies reports many barriers and difficulties in the practical work of EWCs, which limit their operative abilities and efficiency:

Meetings are only once a year, agenda setting is dominated by the management, resources are scarce (no permanent secretary, no steering committee), language and cultural barriers impede communication, local self-interests undermine transnational solidarity, lack of bargaining competence degrades EWCs to mere symbolic bodies with no concrete means of representing workers' interests, etc. (Köhler, González Begega 2011: 146).

This might slowly lead to be a strategic re-orientation of trade unions and especially of the European trade union federations towards other instruments of transnational employment relations. At the moment it seems that the European trade unions consider transnational company agreements a more dynamic arena of European level social dialogue than EWCs as the imply effective collective bargaining among management and trade union representatives, whereas EWCs have no bargaining rights and are often very heterogeneous and complex bodies with huge difficulties to reach common interest articulation. However, today there is no legal framework for such agreements between trade unions and companies.

A final but not at all minor finding of our study is the absence of reliable data on the compliance rate of the EWC Directive. The ETUI EWC Database includes only the existing EWCs as reported by the national trade union organisations. The

absence of a formal register of companies covered by the Directive, as proposed repeatedly by trade unions constitutes a lost opportunity for the revitalization of the process (Buschak 2004; ETUI 2008). The opposition of employers and the lack of interest of the European institutions leave this substantial piece of an emerging European industrial relations system without the necessary information base and make it difficult for trade unions to identify potential companies covered by the Directive. Arguably, an EWC is an instrument of employment relations that employee representative of some companies might not need. However, we insist that workers throughout Europe should be informed about whether their employer is covered by the Directive in order to be able to make use of this instrument.

The EWC Directive has opened an important institutional field to develop employee representation and participation structures at European level but our findings, in line with other studies, reveal a clearly underdeveloped field. Labour's energy for enhancing information and consultation rights does not keep up with the pace of transnational corporate restructuring and economic integration. Employers efficiently block or downgrade the effective operation of these information and consultation bodies whereas political and trade union organisations seem to lose interest in their further empowerment. The scientific community does not draw significant attention to the reasons for the unused potential of EWCs, thus leaving an important gap in the literature. For the future research agenda, quantitative research as presented here will need to be combined and enhanced with qualitative research on the actual processes and outcomes of EWCs.

The recast EWC Directive 2009/38/EC establishes a new deadline for a further revision process to be completed in June 2016. This should be taken as an opportunity by trade unions and political groups interested in the social dimension of the European Union to revitalise the process of EWC creation and empowerment. The aim should be to convert the EWC from a song-and-dance act into an effective bargaining partner for central company management (Euro-Workscouncil 2011).

References

- Arrowsmith, J., Pulignano, V. (eds.) (2013), *The Transformation of Employment Relations in Europe. Institutions and Outcomes in the age of Globalization*, London: Routledge
- Blokland, A. (2002), *Accounting for the 'missing' European Works Councils*, Utrecht: University of Utrecht

- Boni, G. (2012), Introduction, in: Schomann, I., Jagodzinski, R., Boni, G., Clauwaert, S., Glassner, V., Jaspers, T., *Transnational collective bargaining at company level*, Brussels: ETUI
- Buschak, W. (2004), The practical and legal problems of European works councils: reviewing the Directive, in: I. Fitzgerald, J. Stirling (eds.), *European works councils. Pessimism of the intellect, optimism of the will?*, London: Routledge: 67–79
- da Costa, I., Pulignano, V., Rehfeldt, U. and Telljohann, V. (2012), ‘Transnational negotiations and the Europeanization of industrial relations. Potential and obstacles’, *European Journal of Industrial Relations* 18(2): 123–137
- Eurofound (1998), *Negotiating European Works Councils: An Analysis of agreements under Article 13*, Luxembourg: Publications Office of the European Union
- Eurofound (2000), *Negotiating European Works Councils: A comparative study of Article 6 and Article 13 agreements*, Luxembourg: Publications Office of the European Union
- Eurofound (2001), *Bargaining at European level? Joint texts negotiated by European Works Councils*, Luxembourg: Publications Office of the European Union
- Eurofound (2004), *European Works Councils in practice*, Luxembourg: Publications Office of the European Union
- Eurofound (2006), *European Works Councils and transnational restructuring*, Luxembourg: Publications Office of the European Union
- Eurofound (2015), *European Works Council developments before, during and after the crisis*, Luxembourg: Publications Office of the European Union
- European Trade Union Institute (2008), *Memorandum European Works Councils. Recommendations for policy-making based on current experiences*, Brussels: ETUI-REHS
- European Trade Union Institute (2013), *Benchmarking Working Europe 2013*, Brussels: ETUI
- Euro-Workscouncil (2011), *European Works Council Newsletter 3*, available on-line, <http://www.ewc-news.com/en032011.htm#6>
- Gilman, M., Marginson, P. (2004), *Negotiating European Works Councils: contours of constrained choice*. In Fitzgerald, I., Stirling, J. (eds.): *European Works Councils: Pessimism of the intellect, optimism of the will?*, London: Routledge: 93–111
- González Begega, S. (2011), *Empresa transnacional y nuevas relaciones laborales. La experiencia de los comités de empresa europeos*, Madrid: La Catarata
- González Begega, S., Köhler, H.-D. (2011), ‘Génesis política y nuevas coberturas de la Directiva revisada sobre comités de empresa europeos’, *Cuadernos de Relaciones Laborales* 29 (2): 445–469
- Jaeger, R. (2011), *Europaeischer Betriebsrat. Was man wissen sollte*, Duesseldorf: Hans-Boeckler-Stiftung: http://www.boeckler.de/pdf/mbf_ebr_was_man_wissen_sollte.pdf

- Hauser-Ditz, A., Hertwig, M., Pries, L., Rampeltshammer, L. (2010), *Stabilizing effects of European Works Councils: Examples from the automotive industry*, Frankfurt: Campus
- Jagodzinski, R. (2009), Review, revision or recast? The quest for an amended EWC Directive, in: Degryse, C. (ed.): *Social developments in the European Union 2008*, Brussels: ETUI
- Jagodzinski, R. (2011), EWCs after 15 years – success or failure?, *Transfer* 17 (2), 203–216
- Jagodzinski, R. (2014), *Implementation of enforcement provisions of the European Works Councils Recast Directive: are sanctions really 'effective, proportionate and dissuasive'?* ETUI Policy Brief 7
- Keller, B., Platzer, H.W. (eds.), *Industrial relations and European Integration. Trans- and supra-national developments and prospects*, Aldershot: Ashgate
- Kerckhofs, P. (2002), *European Works Councils. Facts and Figures*, Brussels: ETUI
- Kerckhofs, P. (2006), *European Works Councils. Facts and Figures*, Brussels: ETUI
- Köhler, H.-D. , González Begega, S. (2011), The European Works Council as a Multinational Contested Terrain, in: M. Baglioni, B. Brandl (eds.): *Changing Labour Relations*, Frankfurt a. M.: Peter Lang, 143–169
- Kotthoff, H. (2006), *Lehrjahre des Europäischen Betriebsrats. Zehn Jahre transnationale Arbeitnehmervertretung*, Berlin: Sigma
- Lecher, W., Nagel, B., Platzer, H.W. (1999), *The establishment of European works councils: from information committee to social actor*, Aldershot: Ashgate
- Lecher, W., Nagel, B., Platzer, H.W., Weiner, K. (2002), *European works councils: negotiated Europeanization. Between statutory framework and social dynamic*, Aldershot: Ashgate
- Moreau, M.A. (2008), The Originality of Transnational Social Norms as a Response to Globalisation, in: Bercusson, B., Estlund, C. (eds.): *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions*, Oxford: Hart Publishing: 253–270
- Müller, T., Platzer, H.W. (2003), 'European Works Councils. A new mode of EU regulation and the emergence of a European multi-level structure of workplace industrial relations', in: Keller, B., Platzer, H.W. (eds.): *Industrial relations and European Integration. Trans- and supra-national developments and prospects*, Aldershot: Ashgate: 58–84
- Nakano, S. (2004), 'Managing European Works Councils from Outside Europe', in: Fitzgerald, I., Stirling, J. (eds.): *European Works Councils: Pessimism of the intellect, optimism of the will?*, London: Routledge: 132–146
- Platzer, H.W., Rüb, S., Weiner, K.P. (2001), 'European Works Councils – Article 6 Agreements: quantitative and qualitative developments', *Transfer* 7 (1): 90–113
- Rivest, C. (1996), 'Voluntary European Works Councils', *European Journal of Industrial Relations* 2 (2): 235–253

- Salkin, S. (2002), 'The prototype European works councils revisited: why the first European-wide voluntary agreements for information and consultation appeared in France and Germany?', *Rubikon E-journal*, October
- Waddington, J. (2011), *European Works Councils. A transnational industrial relations institution in the making*, London–New York: Routledge
- Weiler, A. (2004), *European Works Councils in Practice*, Dublin: European Foundation for the Improvement of Living and Working Conditions
- Whittall, M., Knudsen, H., Huijgen, F. (eds.) (2007), *Towards a European Labour Identity. The case of the European Works Council*, London–New York: Routledge
- Whittall, M., Lücking, S., Trinczek, R. (2008), 'Understanding the European Works Council deficit in German multinationals', *Transfer* 14 (3): 453–468
- Whittall, M., Lücking, S., Trinczek, R. (2009), 'The frontiers within. Why employee representatives fail to set up European works councils', *Industrial Relations Journal* 40 (6): 546–562